

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

HERBERT L. CAMPBELL,	)	4:15CV3110
	)	
Petitioner,	)	
	)	
v.	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
SCOTT R. FRAKES, and BRIAN	)	
GAGE,	)	
	)	
Respondents.	)	

This matter is before the court on its own motion. Petitioner Herbert Campbell filed the habeas corpus petition (Filing No. [1](#)) at issue in this case on September 14, 2015. Though not entirely clear, Campbell’s habeas corpus action appears to be a challenge to a 1989 conviction for manslaughter in the Douglas County, Nebraska, District Court. The court takes judicial notice of the public records of the Nebraska Department of Correctional Services (“NDCS”), which reflect Campbell was released from incarceration based on this conviction more than 15 years ago, though he has since been convicted and incarcerated for other offenses.<sup>1</sup> See NDCS Inmate Locator, <http://dcs-inmatesearch.ne.gov/Corrections/InmateDisplayServlet?DcsId=39753> (last visited March 2, 2016).

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<sup>1</sup>Nothing in Campbell’s petition suggests he is “in custody” under the conviction or sentence he seeks to challenge in this case. See [Maleng v. Cook, 490 U.S. 488, 490-91 \(1989\)](#) (“The federal habeas statute gives the United States district courts jurisdiction to entertain petitions for habeas relief only from persons who are ‘in custody’ in violation of the Constitution or laws or treaties of the United States. We have interpreted the statutory language as requiring that the habeas petitioner be ‘in custody’ under the conviction or sentence under attack at the time his petition is filed.”).

On January 20, 2016, the court conducted an initial review of Campbell's petition. The court determined Campbell's petition did not clearly indicate the judgment challenged or the grounds alleged. (Filing No. [15](#).) The court ordered Campbell to file an amended petition for writ of habeas corpus within 30 days. To date, Campbell has not filed an amended petition and the time in which to do so has passed.

IT IS THEREFORE ORDERED that: This case is dismissed without prejudice because Campbell failed to prosecute it. The court will enter judgment by a separate document.

DATED this 2<sup>nd</sup> day of March, 2016.

BY THE COURT:

*s/ Richard G. Kopf*

Senior United States District Judge